

**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**BUREAU OF LAND MANAGEMENT**  
**Arizona State Office**  
222 North Central Avenue  
Phoenix, Arizona 85004-2203  
www.az.blm.gov

**In Reply Refer to:**  
3809 (AZ-932) P

June 6, 2003

EMS TRANSMISSION: 06/13/2003  
Instruction Memorandum No. AZ-2003-019  
Expires: 05/16/04

To: All Field Managers

From: State Director

Subject: Appeal Procedures for Actions Taken Under 43 CFR 3809

DD: None

**Purpose:** Mining Law Administration, Surface Management

**Background:** This Instruction Memorandum (IM) provides interim guidance for Arizona Bureau of Land Management (BLM) Field Offices (FO) to process appeals that arise from action taken pursuant to 43 CFR 3809. It is subject to change pending subsequent guidance now under review at the BLM national level.

**Policy/Action:** The recently promulgated 43 CFR 3809 regulations provide for appeal procedures for actions taken under those regulations. These procedures allow for appeals directly to the Interior Board of Land Appeals (IBLA) and requests for review, meetings and informal hearings with the State Director (SD). This Instruction Memorandum provides guidance in processing appeals, a SD review, meetings and informal hearings with the SD and provides appeals language that must be used in all formal actions taken under 43 CFR 3809.

**State Director Review**

The regulations provide parties adversely affected (appellant) by a decision under 43 CFR 3809 the option of a SD review. This review may also involve a meeting with the SD if requested by the appellant. Both the SD review and a meeting between the SD and appellant are at the discretion of the SD. The regulations do not mandate SD involvement.

If a Field Office (FO) receives a request from an appellant for a SD review, that request must be forwarded, together with a duplicate copy of the case file, to the Arizona State Office (ASO)

code AZ-932, Attn: Ralph Costa. Field Offices are required to forward any such request to the ASO within seven calendar days of receipt. All requests for SD review must be forwarded to the ASO.

Through the years, the ASO has worked closely and collaboratively with FO personnel in preparing 43 CFR 3715 and 43 CFR 3809 orders and decisions. The SD is committed to ensuring that this collaborative working environment continues. **Because of the close working relationship between the ASO and FO's, in most cases, where significant collaboration has occurred during the preparation of a decision, it would not be appropriate for the SD to grant a review under 43 CFR 3809.** In these instances, the SD would timely (within 21 days) decline a request for review.

All granted SD reviews would center on the legal requirements for issuing the order. SD review procedures would not involve "mediation" between the FO and the affected party. For instance, if a FO prepares an order under 43 CFR 3809 requiring the operator to complete a corrective action within 10 days when an affected party states they need 30 days to complete the required action, the SD review would not mediate a new time period. Instead, the SD review would focus on the authority and procedures for issuing the decision and the contents of the case file. **If the FO properly issued the order and the case file is in order, the FO decision would likely be upheld.** Of course, in these cases, the affected party would be encouraged to continue dialogue with the FO.

In all instances, ASO personnel will thoroughly review the case file to insure that the contents are in order, inspection reports are done to professional standards, photographs have been properly mounted and that the action taken is consistent with the contents of the case file. **The SD will likely overturn a FO decision in instances where the case file does not support the action taken.**

### **Meetings with the SD**

A party to an adverse decision by the FO manager may request a meeting with the SD. It is entirely at the discretion of the SD to have such a meeting. When a meeting is granted, the following restrictions will apply:

- 1) Arguments and the presentation of evidence/testimony will be limited to one hour.
- 2) The operator/claimant may elect to have legal counsel present.
- 3) Bureau of Land Management (BLM) may elect to be represented by the Solicitor's Office.
- 4) Recording devices will not be allowed.
- 5) BLM will not present testimony.
- 6) The SD may appoint a representative for the meeting.

The nature of a meeting with the SD is to allow the operator/claimant the opportunity to present

their case. For this reason, BLM will not present testimony nor make counter arguments. Any meeting with the SD becomes part of the administrative record and would be subject to review should the affected party pursue appeal with the IBLA.

### **Informal Hearings with the SD**

Reference §3809.601 (b)(iii) and §3809.602(b), require that, before BLM can issue a Suspension Order under §3809.601 or revoke a plan of operations or nullify a notice under §3809.602, the operator/claimant is entitled to an informal hearing with the SD. These hearings are not discretionary on the part of the SD. If BLM wishes to pursue a suspension or revocation or nullification, the operator/claimant must be afforded the opportunity to have an informal hearing with the SD. When an informal hearing is granted, the following restrictions will apply:

- 1) Arguments and the presentation of evidence/testimony will be limited to one hour.
- 2) The operator/claimant may elect to have legal counsel present.
- 3) BLM may elect to be represented by the Solicitor's Office.
- 4) Recording devices will not be allowed.
- 5) BLM will not present testimony.
- 6) The SD must be present at the hearing unless the operator/claimant agrees in writing to meet a designated representative.

### **Appeals to IBLA**

A party to an adverse decision may also appeal to IBLA. Attachment 1 of this document is appeals language that must be used in all 43 CFR 3809 decisions. Please be aware that the appeals procedures for 43 CFR 3715 are very different, and the appeals language provided should only be used for 43 CFR 3809 cases. Appeals made to IBLA should be handled by FO personnel using standard procedures.

Offices are cautioned also not to combine 43 CFR 3809 actions with 43 CFR 3715 actions. Each action requires a separate decision, each with a unique appeals paragraph. However, an order issued under 43 CFR 3715 may cite violations of 43 CFR 3809 and vice versa, but the order itself must be issued solely on the authority of either 43 CFR 3715 or 43 CFR 3809.

**Time frame:** This policy is effective upon receipt.

**Budget Impact:** There will be a budget impact, but the amount is undetermined at this time.

**Background:** The appeal procedures for action taken pursuant to 43 CFR 3809 provide for SD review.

**Manual/Handbook Sections Affected:** Bureau Manual Section 3809.

**Coordination:** AZ 932

**Contact:** If you have questions please contact, Ralph Costa at (602) 417-9349.

SIGNED BY:  
Elaine Y. Zielinski

AUTHENTICATED BY:  
Susan Williams  
Staff Assistant

Attachment

1 – 43 CFR 3809 appeals language (2 pp.)

## Appeals Language for 43 CFR 3809

Pursuant to 43 CFR 3809.800 (a), you may ask the Arizona State Director to review this decision. If you request State Director review of this decision, your written request must be a single package that includes a brief written statement explaining why BLM should change its decision and any documents that support your written statement (see 43 CFR 3809.805 (a)). This decision will remain in effect during the period of State Director review unless a stay is granted by the State Director (see 43 CFR 3809.808 (a)). Requests for State Director Review must be sent to the BLM, State Director Review, C/O FIELD OFFICE ADDRESS. When you submit your request for State Director review, you may also request a meeting with the State Director (see 43 CFR 3809.805 (b)).

If you have requested a State Director review, you may terminate this review by filing an appeal with the Interior Board of Land Appeals (IBLA) during the 30 days immediately following the date of receipt of the original decision. If you have requested a State Director review and the State Director decides not to review the decision in your case, you may appeal to IBLA. An appeal to IBLA must be taken during the 30 day period following the date the State Director decides not to review the decision. If the State Director does not make a decision within 21 days of your request, you should consider your request for State Director review declined and you have 30 days following that 21 day period in which you may appeal the original decision to IBLA (see 43 CFR 3809.806). You may also appeal an unfavorable decision resulting from the State Director review. If appealing an unfavorable decision from a State Director's review, you have 30 days from the date that you receive or are notified of that decision to appeal to IBLA.

You may also file an appeal directly to IBLA and bypass completely the State Director review (see 43 CFR 3809.800 (b)). If you wish to bypass State Director review and appeal directly to IBLA, your appeal must be filed within 30 days of the date you received this decision.

Any appeal taken with IBLA must be in accordance with 43 CFR 4.400 et seq. If you decide to appeal, your Notice of Appeal (NOA), must be filed in writing and in accordance with Form 1842-1 (enclosed) at the FIELD OFFICE NAME AND ADDRESS, and with Office of the Solicitor (Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Court House #404, 401 West Washington Street SPC44, Phoenix, Arizona 85003-2151).

The required Statement of Reasons (SOR; see 43 CFR 4.412) may be filed with the NOA or, if not, it must be filed with the IBLA, Office of Hearings and Appeals, U.S. Department of the Interior, MS 300-QC, Arlington, VA 22203, within 30 days after the NOA was filed. (see also required service at 43 CFR 4.413).

The decision, signed by the Field Office Manager, will remain in effect during the appeal unless a stay is granted. If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, or for a stay pursuant to 43 CFR 3809.808 (b) during a State Director review, the petition for a stay must accompany your notice of appeal or with your package requesting State Director review. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision shall show sufficient justification based on the following standards:

Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.